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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/711,288 | 09/08/2004 | Ramon Diaz | 24507-00001 | 5287 |

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EXAMINER

SAADAT, CAMERON

ART UNIT PAPER NUMBER

3713

DATE MAILED: 08/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|--------------------------------------|------------------------------------|--|
| Office Action Summary | Application No. 10/711,288 | Applicant(s) DIAZ ET AL. | |
| | Examiner Cameron Saadat | Art Unit 3713 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/8/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requires of this title.

Claims 1-15 are rejected under 35 U.S.C. 101.

The language of claims raises a question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101. Mere ideas in the abstract that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. A process that consists solely of the manipulation of an abstract idea is not concrete or tangible. *See In re Warmerdam*, 33 F.3d 1354, 1360, 31 USPQ2d 1754, 1759 (Fed Cir. 1994). In this case, the claim merely recites a *computerized method* in the preamble and lacks any recitation of a computerized step.

Claim Rejections - 35 USC § 102

Claims 1-11 and 13-28 are rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter. Claims 1-11 and 13-28 are substantially identical and supported by parent application 10/097,783. Accordingly, a question of inventorship has been raised since declaration filed 3/13/2002 of parent application 10/097,783 identifies inventors Hector Manuel and Ramon Diaz, and declaration of this instant CIP application identifies inventors Ramon Diaz and Olga Diaz.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kouba et al. (USPN 6,325,631; hereinafter Kouba) in view of Occupational Safety and Health Administration (OSHA 2254; Hereinafter OSHA).

Regarding claim 1, Kouba discloses a method of delivering building safety information comprising: identifying a suitable building where the deployment of building safety information can be done in an efficient, cost-effective manner (Col. 2, lines 33-40); creating a customized safety presentation; delivering the presentation to building occupants; authenticating the users of the presentation; testing the occupant; and retaining the authentication data and test results (Col. 5, lines 1-9).

Kouba discloses a safety instruction and testing method as mandated by the Occupational Safety and Health Administration, but does not explicitly disclose that the safety information includes emergency response plans. However, OSHA teaches training guidelines that include *emergency response plans* (See P. 20). Therefore, it would have been obvious to one of ordinary skill in the art to

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modify the building safety training method described in Kouba, by including emergency response plans in the safety information in order to comply with the training requirements set forth in *title 29, Code of Federal Regulations Part 1910*.

Regarding claims 2-3, Kouba discloses a method of providing safety instruction corresponding to a specific building (work-site). Kouba does not explicitly disclose that the buildings are (as per claim 2) identified as Hi-rise Class A, Class B or Class C buildings or (as per claim 3) identified as located in central business districts or suburban areas of major metropolitan cities. However, it would have been obvious to an artisan to modify the site-specific safety training materials described in Kouba for any type of work-site, in order to comply with OSHA regulations in all work places, and thereby provide effective safety training to contractors whose occupation requires working at multiple work-sites for short periods of time (See Kouba, Col.1, lines 27-38).

Regarding claim 4, Kouba discloses a method wherein the building has telecommunications capabilities (See Fig. 1).

Regarding claim 5, Kouba discloses a method wherein the safety presentation is an audio-visual presentation (Col. 6, line 2).

Regarding claim 6, Kouba discloses a method wherein the audio-visual presentation is created as an interactive computerized multi-media presentation (Col. 6, lines 1-6).

Regarding claim 7, Kouba discloses a method where the audio-visual presentation may be created as non-interactive format (Col. 6, lines 1-6).

Regarding claim 8, Kouba discloses a method, wherein the presentation is deployed via the public Internet (Col. 3, lines 20-21).

Regarding claim 9, Kouba discloses a method wherein the presentation is deployed over a private area network (Col. 3, lines 34-39).

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Regarding claim 10, Kouba discloses a method wherein the presentation is deployed on a customer's server (See Fig. 1).

Regarding claim 11, Kouba does not explicitly disclose that the presentation is deployed using removable media. However, OSHA teaches a method of delivering safety information, wherein a presentation is deployed using removable media (OSHA, P. 4, last paragraph). Thus, in view of OSHA, it would have been obvious to provide a presentation on a removable media, in order to vary learning materials as desired by an employer.

Regarding claim 12, Kouba does not explicitly disclose a flash drive. However, it is the examiner's position that the feature of storing a presentation on a flash drive is old and well known for providing portable learning materials so that a learner is not confined to one location for training. Therefore, it would have been obvious to one of ordinary skill in the art to provide a flash drive for deploying the presentation, thereby providing portable learning materials so that a learner is not confined to one location for training.

Regarding claim 13, Kouba discloses a method wherein the testing occurs after completion of the presentation (See Fig. 3, ref. 220).

Regarding claim 14, Kouba discloses a method, wherein the testing occurs online (See Fig. 1).

Regarding claim 15, Kouba discloses a method, wherein the testing occurs via telephone (Col. 3, line 25).

Regarding claim 16, Kouba discloses a system for deploying safety information comprising: at least one server configured to host the safety multi-media presentations; a network configured to transmit the safety multi-media presentations; at least one computer connected to said network (See Fig. 1; Col. 5, lines 1-9).

Kouba discloses a safety instruction and testing method as mandated by the Occupational Safety and Health Administration, but does not explicitly disclose that the safety information includes

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emergency response plans. However, OSHA teaches training guidelines that include *emergency response plans* (See P. 20). Therefore, it would have been obvious to one of ordinary skill in the art to modify the building safety training method described in Kouba, by including emergency response plans in the safety information in order to comply with the training requirements set forth in *title 29, Code of Federal Regulations Part 1910*.

Regarding claim 17, Kouba discloses a system wherein the server can run several multi-media presentations simultaneously (Col. 4, lines 41-49).

Regarding claim 18, Kouba discloses a system wherein the server is configured to authenticate each user, wherein said authentication is used to determine which multi-media presentation is accessed (Col. 4, lines 52-67).

Regarding claim 19, Kouba discloses a system wherein the server is configured to administer an emergency response preparedness test (Col. 5, lines 1-9).

Regarding claim 20, Kouba discloses a system, wherein the server is configured to store the results of each test (See Fig. 3, ref. 228).

Regarding claim 21, Kouba discloses a system, wherein the server is configured to tabulate test results (Fig. 3, ref. 222).

Regarding claim 22, Kouba discloses a system wherein the network is the public Internet (Col. 3, lines 20-21).

Regarding claim 23, Kouba discloses a system, wherein the network is a proprietary network (Col. 3, lines 34-39).

Regarding claim 24, Kouba discloses a system, wherein the computer is configured have access to the network (See Fig. 1)

Regarding claim 25, Kouba discloses a system, where the computer is located at a recipient's place of business (See Fig. 1, ref. 40, 42, 44).

Regarding claim 26, Kouba discloses a system, wherein the computer is located in a public testing center (Fig. 1, ref. 20, 22, 24).

Regarding claim 27, Kouba discloses a system, wherein the computer is located on the same private network as the server (See Fig. 1).

Regarding claim 28, Kouba discloses a system configured to track system usage comprising a first module configured to track certifications generated from the creation of a safety presentation; a module configured to track system usage by clients; a module configured to track record keeping; a module configured to summarize the record keeping information (See Fig. 6). Kouba discloses a safety instruction and testing method as mandated by the Occupational Safety and Health Administration, but does not explicitly disclose that the safety information includes emergency response plans. However, OSHA teaches training guidelines that include *emergency response plans* (See P. 20). Therefore, it would have been obvious to one of ordinary skill in the art to modify the building safety training method described in Kouba, by including emergency response plans in the safety information in order to comply with the training requirements set forth in *title 29, Code of Federal Regulations Part 1910*.

In addition Kouba does not explicitly disclose that system is configured to track *revenue* generated from the creation of the safety presentation or from changes to the presentation. However, OSHA discloses a safety training program wherein the ultimate success of the training program may be measured by observation of changes in the workplace that result in reduced injury or accidents which directly correlate to a trainee's value. Hence, it would have been obvious to an artisan to modify the certification tracking system described in Kouba, by further recognizing that the safety training program generates revenue (certified employees that are able to work at reduced risk), and additionally tracking the revenue to evaluate the training program effectiveness (See OSHA, P. 5).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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- Osborne et al. (USPN 6,589,055) – disclose a method and system for delivering safety training based on specific work-sites.
- Hollingsworth (USPN 6,157,808) – discloses a computerized employee certification and training system.
- Guertin (USPN 5,977,872) – discloses a building emergency simulator for training personnel.
- Downs (USPN 1,660,867) – discloses a method of presenting building emergency procedures.
- OSHA (3088) “How to Plan for Workplace Emergencies and Evacuations” – discloses training procedures for workplace emergencies.
- OSHA (2019) “OSHA Publications and Audiovisual Programs” – discloses a training product for workplace emergencies and a product for record-keeping guidelines for occupational injuries.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cameron Saadat whose telephone number is (571) 272-4443.

The examiner can normally be reached on M-F 9:00 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Xuan Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Cameron Saadat
July 25, 2005

CS



XUAN M. THAI
SUPERVISORY PATENT EXAMINER

TC3700